



Office of the Attorney General
State of Texas

September 2, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
Texas Dept. of Criminal Justice
P. O. Box 99
Huntsville, Texas 77342-0099

OR92-521

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16787 (your TDCJ# OR92-0708-0324).

The Texas Department of Criminal Justice -- Institutional Division (the division) received an open records request from a division inmate for certain "racial statistics" pertaining to inmate housing, discipline, reports of "use of force," and work assignments. The requestor also seeks statistics on "the total number of the employees whom are related thru [sic] kinship . . . to colleague [sic] on the Michael Unit, & the racial breakdown thereof" for a specified time period. You contend that the requested information comes under the protection of section 3(a)(3) of the Open Records Act.

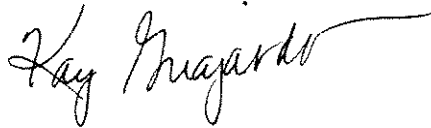
To secure the protection of section 3(a)(3), a governmental body must demonstrate that requested information "relates" to pending or reasonably anticipated litigation. Open Records Decision No. 551 (1990). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

The requestor prefaced his open records request with the statement that he is seeking the information "in order to effectively levy a federal civil rights claim against employees of the Texas Dept. of Criminal Justice -- Institutional Division's Michael Unit." Given this assertion, this office agrees that litigation in this instance

is reasonably anticipated and that the requested documents¹ clearly relate to that litigation. Accordingly, we conclude that the division may withhold the requested documents pursuant to section 3(a)(3).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-521.

Yours very truly,



Kay Hamilton Guajardo
Assistant Attorney General
Opinion Committee

KHG/RWP/lmm

Ref.: ID# 16787
ID# 17021
ID# 17058
✓

cc: Mr. Robert C. Hearne
TDCJ# 347156
Michael Unit
P. O. Box 4500
Tennessee Colony, Texas 75886

¹You have submitted to this office for review statistics related to the racial breakdown of inmate housing and overall population at the Michael Unit and of occasions on which force was used on inmates, broken down by the race of the officers and inmates involved. You state, however, that the division does not possess compiled statistics related to race and disciplinary histories or familial relationships and that such statistics could not easily be compiled. Such compilation is not required under the Open Records Act. *See generally* Attorney General Opinion JM-672 (1987).